

of the said lunatic. And that the trustee report to this Court, on oath, a full account of all his proceedings in relation to the said sale and investment; and also an account of his proceedings as trustee, as required by the orders of the 18th of June, and the 29th of December, of the year 1829. *Boarman's Case*, 2 Bland, 90.

Some time after this the lunatic died, and no further proceedings respecting his estate appear to have been had here.

### AUSTIN v. COCHRAN.

#### ABATEMENT OF CREDITOR'S SUIT.

A creditor's suit does not abate by the death of a plaintiff or any creditor who may have come in, if there be then a plaintiff or creditor competent to prosecute the suit.

But a creditor's suit will abate by the death of a defendant heir or devisee, whether there be any surplus of the proceeds of the sale to be returned to him or not.

THIS was a creditor's bill filed on the 18th of March, 1820, in Baltimore County Court, by Edward Austin, Edward Austin the younger, Anthony Austin, and John Austin, partners trading under \* the firm of George Austin & Co., against Deborah Cochran, William S. Cochran, Thomas L. Emory, and Wil- **338**  
liam G. McClure. The bill states, that a partnership in trade had existed and been carried on between the late William Cochran and the late John G. Comegys, in the City of Baltimore, under the firm of William Cochran & Comegys; which firm had, in the course of their dealings, become largely indebted to the plaintiffs; which debt then remained due and unpaid; that William Cochran died leaving a considerable real and personal estate, which, by his will, he devised to his wife the defendant Deborah, and to his infant son the defendant William S. Cochran; and appointed Deborah, John G. Comegys, and Samuel Hollingsworth, his executors; that Deborah and Comegys had qualified as his executors, and Hollingsworth had refused to accept the appointment; that John G. Comegys, the surviving partner, had taken into his possession all the estate and effects of the firm; and after some time died, having by his will appointed the defendants Emory and McClure his executors, who qualified accordingly as such; that the property and estate of the firm which passed into the hands of the surviving partner Comegys, were entirely or nearly absorbed by other claims against it; and that the personal estate of the late William Cochran was insufficient to pay his debts. Whereupon it